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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JAIRO BRAVOPEDROZA,

Defendant and Appellant.

H033678

(Santa Clara County

Super. Ct. No. CC779895)

Defendant Jairo Bravopedroza pleaded no contest to attempted first degree burglary. At sentencing, the trial court imposed a \$10 local crime prevention fine plus a \$166.50 penalty assessment (Pen. Code, § 1202.5) and awarded 64 days of presentence good conduct credit (*id.*, § 2933.1 [limiting presentence conduct credits for defendants convicted of a violent felony to 15 percent of worktime credit]). On appeal, defendant contends that (1) the crime prevention fine is not applicable to attempted crimes, and (2) he was not convicted of a violent felony and is entitled to full presentence good conduct credits. The People concede the points and we agree the concession is appropriate. We therefore modify and affirm the judgment.

DISCUSSION

The \$10 local crime prevention fine imposed pursuant to Penal Code section 1202.5 applies to a defendant who is convicted of certain enumerated offenses. Attempted crimes are not among those offenses. We accept the People's concession in this regard and will strike the fine.

The parties accept that the trial court did not explain the statutory basis for the penalty assessment, and defendant asks that we remand for the purpose of an explanation. (*People v. High* (2004) 119 Cal.App.4th 1192, 1200.) The parties are incorrect and we need not remand the case.

The probation report recommends, “A \$10.00 fine plus penalty assessment be imposed pursuant to Section 1202.5 of the Penal Code.” At sentencing, the trial court pronounced, “A ten-dollar fine plus penalty assessment is imposed.” The abstract of judgment recites, “Fine(s): \$10+166.50PA per PC 1202.5.” Thus, the trial court imposed the penalty assessment pursuant to Penal Code section 1202.5. We will therefore strike the penalty assessment along with the fine.

“A defendant convicted of a violent felony is limited as to the amount of presentence and postsentence custody credits that can be earned.” (*People v. Singleton* (2007) 155 Cal.App.4th 1332, 1336-1337.) Subdivision (a) of Penal Code section 2933.1 provides that “any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 shall accrue no more than 15 percent of worktime credit, as defined in Section 2933.”

Subdivision (c) of Penal Code section 667.5 lists 23 violent felonies, including “[a]ny burglary of the first degree.” (Pen. Code, § 667.5, subd. (c)(21).) But it does not list attempted burglary.

Defendant therefore should have been awarded credits under Penal Code section 4019, subdivision (f), which states that “a term of six days will be deemed to have been served for every four days spent in actual custody.” Since defendant served 427 actual days in presentence custody, the trial court should have awarded 213 days of good conduct credit for a total award of 639 days.

DISPOSITION

The judgment is modified to strike the \$10 local crime prevention fine and \$166.50 penalty assessment. The judgment is modified to reflect that defendant is awarded 639 days presentence credit consisting of 427 days actual custody credit and 213 days good conduct credit. As so modified, the judgment is affirmed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Elia, J.